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August 2, 2022

Via Electronic Filing

Magistrate Judge Vera M. Scanlon
United States District Court
Eastern District of New York
225 Cadman Plaza East, 1214 South
Brooklyn, New York 11201

RE: *Green Mountain Holdings (Cayman) Ltd. v. Precision Pro Contracting Services, LLC*, 21-cv-03287(WFK)(VMS)
Letter-Motion to Compel Compliance with Subpoenas Ad Testificandum and Duces Tecum directed to Ed Gitlin and NY Tower Fund Capital LLC

Dear Magistrate Judge Scanlon:

I represent Defendants/Third-Party Plaintiffs Melvin Turner and Precision Precision Pro Contracting Services LLC (“Borrower Defendants”) in the above referenced action pending before you. On May 5, 2022, my office issued a Subpoena Ad Testificandum and Duces Tecum directed to Ed Gitlin (**Exhibit A**) and a Subpoena Ad Testificandum and Duces Tecum directed to NY Tower Fund Capital LLC (**Exhibit B**) (collectively, “Subpoenas”). Ed Gitlin and NY Tower Fund Capital LLC were the prior holders of the Note and Mortgage underlying this action and Gitlin, as agent for Plaintiff, communicated with the Borrower Defendants regarding the payoff.

The Subpoenas, in nine demands, exclusively seek communications between Gitlin and/or NY Tower Fund Capital LLC and Plaintiff, Plaintiff’s principal or employees, Weltz Kakos Gerbi Wolinetz Volynsky LLP, and Borrower Defendants regarding 617 Sackman Street, Brooklyn, New York, being the property at issue in this action.

On May 27, 2022, three days before the compliance date on NY Tower Fund Capital LLC, the Borrower Defendants received a letter objecting to the service and scope of the Subpoenas. **Exhibit E.** After receiving the objection letter, which responds solely by objection, I reached out to counsel for Gitlin and NY Tower Fund Capital LLC to discuss the subpoena, in good faith. After several missed calls, the parties agreed to speak on June 13, 2022 in the AM. **Exhibit F.** That conversation never occurred, however. On July 27, 2022, I called and emailed Mr. Borg to discuss the Subpoena and indicated that if this matter was not resolved by the 29th, I would have to make the instant motion. **Exhibit G.** On August 2, 2022, I called Mr. Borg again and only reached voice mail.

Pursuant to FRCP Rule 37, the Borrower Defendants pray the Court direct Gitlin and NY Tower Fund Capital LLC to comply with the Subpoenas. Clearly, good faith efforts have been made to obtain compliance with the Subpoenas, but compliance has not been forthcoming.

The Borrower Defendants seek, *inter alia*, communications establishing Gitlin and NY Tower Fund Capital LLC's agency vis-à-vis Plaintiff as well as any communications between Gitlin and the Borrower Defendants. It has come to my attention that the fraudsters created a fake Yahoo! Email address mimicking the Borrower Defendants and pretending to be Melvin Turner on or about April 27, 2021. **Exhibit I.** Mr. Turner's email address is faithbldgsvs@yahoo.com and the fake email address is faithblgdsvs@yahoo.com, reversing the "dg" to "gd." **Exhibit I.** The Borrower Defendants believe there may be further such emails in Gitlin and NY Tower Capital LLC's possession that are not in Plaintiff's possession or Defendant's. Finally, the Subpoenas direct depositions of both Gitlin and NY Tower Capital LLC. The Borrower Defendants seek to complete all of this prior to the close of discovery in mid-September.

The Borrower Defendants note that no motions to quash the Subpoenas have been made by Plaintiff or Gitlin or NY Tower Fund Capital LLC and the initial time for compliance has elapsed.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Richland", with a stylized flourish extending from the end.

Daniel H. Richland, Esq.